IN THE HIGH COURT OF MADHYA PRADESH AT INDORE

BEFORE

HON'BLE SHRI JUSTICE SUBODH ABHYANKAR

ON THE 22nd OF AUGUST, 2024

MISC. CRIMINAL CASE No. 28712 of 2024

SUNIT @ SUMIT SINGH

Versus

THE STATE OF MADHYA PRADESH

Appearance:

Shri Abhay Saraswat- Advocate for the applicant.

Shri Virendra Khadav- P.L./G.A. for the State.

Shri Raisingh Rawat, S. I., P.S. Namli, District- Ratlam is present in person.

Shri Reval Singh Barde, Inspector, P.S. Namli, District- Ratlam, through V. C.

ORDER

1] They are heard. Perused the case diary/challan papers.

2] This is the applicant's **sixth** bail application filed under Section 483 of Bharatiya Nagrik Suraksha Sanhita, 2023/ Section 439 of Criminal Procedure Code, 1973, as he / she is implicated in connection with Crime No.270/2020 registered at Police Station Industrial Area, District Ratlam (MP) for offence punishable under Sections 302, 34, 450, 397, 398, 114, 120-B of the Indian Penal Code, 1860 and Section 25 and 27 of the Arms Act, 1959. The applicant is in custody since 02.12.2020.

3] Out of his earlier five applications, three applications have been dismissed as withdrawn and two applications have been allowed temporarily on account of the applicant suffering from Hepatitis-B.

4] Counsel for the applicant has submitted that the applicant is lodged in jail since last more than 3 years and 8 months, and the final conclusion of trial is likely to take sufficient long time, as even as per the status report, only 11 witnesses have been examined until now and 18 more witnesses are still to be examined, who are not turning up in the trial Court.

5] It is also submitted that the date of incident is 18.06.2020 whereas, the applicant has been arrested on 02.12.2020 and initially, only a mobile phone, which also belonged to him, was seized, however, after three days, his pant has also been seized, which according to the prosecution, was worn by the applicant at the time of the incident and the DNA report of the same is also positive.

6] Counsel has submitted that the DNA report is falsely made up as it is not possible that the applicant would keep his pant for six months in his house and in the same condition, to be recovered by the prosecution. Thus, it is submitted that the application may be allowed, and the applicant be released on bail.

7] Counsel for the respondent / State, on the other hand has opposed the prayer and it is submitted that no case for grant of bail is made out.

8] Having considered the rival submissions, on perusal of the case diary and taking into account the fact that the applicant is lodged in jail since 02.12.2020, and the DNA report is in respect of his pant

which has been seized from the applicant after six months of the date of incident, and the fact that no other material has been seized from him relating to the robbery, this Court is inclined to allow the present application looking to the fact that only 11 witnesses have been examined and 18 more witnesses are still to be examined.

9] Accordingly, without commenting on the merits of the case, the application filed by the applicant is **allowed**. The applicant is directed to be released on bail upon furnishing a personal bond in the sum of **Rs.25,000/-** (Rupees Twenty Five Thousand) with one solvent surety of the like amount to the satisfaction of the trial Court for his/her regular appearance before the trial Court during trial with a condition that he / she shall remain present before the court concerned during trial and shall also abide by the conditions enumerated under Section 437 (3) Criminal Procedure Code, 1973.

10] S.I. Raisingh Rawat, Police Station Namli, District Ratlam is also present in the Court, pursuant to the earlier order passed by this Court, as this Court had enquired from the counsel for the State as to why the chance fingerprints were not obtained from the spot, as it is alleged that the the appellant was also present when the robbery took place, wherein, a woman was murdered brutally. Thus, on a query made to Shri Rawat, S.I., he has submitted that since many persons had entered into the house, hence, it was not possible to take fingerprints from the spot. In the considered opinion of this court, the aforesaid explanation is not satisfactory, as it is apparent from the memo prepared under Section 27 of the Evidence Act, 1872 by the accused persons that they had searched for the valuables in the house

and had also obtained the ornaments from an iron Almira. Thus, it is not possible that the fingerprints of the accused persons were not left by them on the iron Almira. It is apparent that there are sheer lapses in the investigation, which are the result of unprofessional and callous approach adopted by the investigating officer, and this not an isolated incident, in fact similar is the situation in most of the serious offences, as the persons responsible for the same do not discharge their duties with due diligence, and by the time it is realized, it is too late in a day to take any corrective measures, leaving this or the other courts only to lament the same through its or their judgments

Directions to ***Director General of the Police, M.P., Bhopal*** *regarding formation of* ***Serious Crimes Investigation Supervising Team***

11] On earlier occassions, in similar situation, in cases of serious infirmities in the investigation, this Court in ***M.Cr.C. No.38968/2022***, in the case of ***Abhishek S/o Dinesh Dey Vs. State of M.P.*** vide its order dated 13.09.2022 has also made adverse comments on the Investigating Officer on account of his failure to send the hairs which were recovered from the hands of a deceased victim, and also that of the accused, for DNA profiling, as admittedly, from the hands of the deceased, certain hair were also collected by the Investigating Officer. The relevant paras of the order read as under:-

> "Counsel for the applicant has submitted that there is no DNA report available on record to connect the applicant with the offence despite that from the hands of the deceased, some hairs were also found, alleged to be belonging to her murderer.
>
> Taking note of the aforesaid submissions, on the last date of hearing i.e. 24.08.2022, this Court had also directed the Government Advocate either to produce the DNA Report positively by the next date of hearing, or the Director of the Forensic Science Laboratory to explain the delay.

In pursuance of the aforesaid order, Director, Forensic Science Laboratory, Bhopal, Shri Shashikant Shukla, IPS Officer, is present before this Court along with the Investigating Officer of the case, Inspector Gopal Parmar, Station House Officer, Police Station Annapurna, Indore. To the utter surprise and shock to the court Shri Shukla submits that till date, the samples collected by the prosecution, during the course of investigation of the case have not been received by the Forensic Science Laboratory; and when the Station House Officer, Police Station Annapurna, Indore, District Indore (who is also present in Court) was confronted by this Court with regard to the aforesaid statement made by the Director of the Laboratory, the investigating officer Gopal Parmar has submitted that due to his inadvertence, the samples could not be sent to the Forensic Science Laboratory and he would proceed to do the needful during the course of the day only and would get the DNA report produced in the trial Court within one month's time.

Counsel for the respondent / State has also submitted that due to mistake on the part of the Investigating Officer, the samples could not be sent to the Forensic Science Laboratory and he would also ensure that the same to be filed in the trial Court as expeditiously as possible.

On due consideration of the submissions, perusal of the case diary and the documents filed on record, it is found that on 10.02.2022, in the proceeding of the trial Court, which was placed on record by the applicant, it is mentioned that although the FSL Report has been received, but DNA profiling of the article seized by the prosecution still remains to be sent, as from the hands of the de-ceased certain hairs were also collected which are to be matched with the hairs of the applicant. In the aforesaid order, it is also stated that the hairs which have been seized should also be deposited in the Malkhana, after they are examined in the Forensic Science Laboratory.

It is rather surprising that despite such an order passed by the trial Court, the Investigating Officer has not taken care to get the DNA report prepared at the earliest; and in fact, according to Shri Parmar, he forgot to send the samples to the laboratory. The aforesaid inadvertence, as admitted by Shri Parmar is not an inadvertence, but a gross negligence on his part as also his superiors who are also required to see in what direction the investigation is proceeding in such serious crime. It is inconceivable, that such lapses are still being committed by the prosecution agencies despite serious observations made by this Court continuously in one or the other."

(Emphasis Supplied)

12] Similarly, while sitting in the Division Bench of this Court, I (Justice Subodh Abhyankar) had made the following observations in a similar case, in the case of ***Habu @ Sunil Vs. State of M.P.*** passed in ***CRA No.963/2012*** where the hairs of the accused were collected from the dead body. The relevant paras of the said order dated 24.08.2022 are as under:-

> **"6.** It is submitted that there is no forensic evidence available on record to connect the appellant with the offence, despite the fact that the deceased was found to have certain hairs in her hand and it appears that the hairs were of the assailant's only, despite this, the prosecution has not produced any DNA Report connecting the said hairs to the appellant and the FSL Report which is available in respect of those hairs is not conclusive, which is apparent from the report itself proved as Ex.P/30, whereas the hairs have been seized vide Ex.P/29.
>
> xxxxx
>
> **18**. So far as the forensic evidence is concerned, it is found that the hair which were recovered from the hands of the deceased and the hairs of the present appellant were sent to the forensic examination vide **Ex.P/27** and its report is proved as **Ex.P/29**, which reads, as under:
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> "**Opinion**:
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> 1. Hairs of articles Q and R are of Human head origin.
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> 2. Hairs of article Q and R are similar in their morphological and microscopical characteristics, However, **no definite opinion can be given about their origin from one and the same position**.
>
> **Note – Hair article Q and R may be referred to DNA unit for individualization.**"
>
> (Emphasis supplied)
>
> Hair Article 'Q' is the small bunch of hair seized from the spot found on the right hand palm of the deceased and Article 'R' is a small bunch of hairs seized as sample head hairs of the accused Habu and marked as Article 'R'.
>
> **19.** It is surprising that despite this specific chemical examiner's report that the hair Article 'Q' and 'R' may be referred to DNA Unit for individualization, the prosecution has not proceeded with the aforesaid report for their DNA Testing.
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> **20.** Similarly, the FSL Report **Ex.P/30** contains that the Article 'L' is a slide of the deceased, Article 'N' which is the slide of the appellant Habu and Article 'P' which is the underwear of the

> appellant had human spermatozoa on them, but despite this report, they were not sent for any DNA Testing..”
>
> ***(Emphasis Supplied)***

13] In the said case also, only because of the failure on the part of the Investigating Officer and the Forensic experts, the benefit of doubt was given to the accused and he was acquitted for a heinous crime of rape and murder and, in the present case also, as already pointed out, the Investigating Officer made no efforts to take out the finger prints from the house where the murder took place.

14] Thus, despite this Court pointing it out time and again that serious lapses have been committed by the Investigating Officers, there is no discernible progress in the methods and approach of investigation, and the accused persons are allowed to go scot-free, and it appears that whatever observations made by this Court or the other courts in this regard, are only for the satisfaction of their own conscience. It must be understood that when a criminal trial is doomed right from the beginning, only because of slipshod investigation, it is nothing but a sheer misuse of the process of the court, at the cost of the public exchequer.

15] Thus, in its effort to ensure that this practice of careless and sloppy investigation must stop somewhere, and the investigation is not left to the whims of an investigating officer, it is directed to the **Director General of the Police, M.P., Bhopal**, to ensure that in each district of the State, each and every investigation in serious crimes be supervised by a team comprising of two member, which shall be headed by a senior level police officer, not below the rank of an experienced IPS officer, and other officer of the Police department, not below the rank of Sub-Inspector of Police, who may be chosen by

the said IPS officer. The said **Serious Crimes Investigation Supervising Team** shall supervise the investigation, and the Investigating Officer shall also report and apprise the Team about the progress of the investigation for its inputs, to ensure that there are no lapses in the investigation, and the loopholes are plugged at the right time. The said team, together with the investigating officer, shall be held responsible for any lapses in the investigation.

16] M.Cr.C. stands ***allowed*** and ***disposed of*** with the aforesaid observations.

17] Let a copy of the order be also sent to the Office of the Advocate General for its proper compliance.

18] Let the compliance report of this order be sent to the Registry of this Court within four weeks time.

Certified copy as per rules.

(SUBODH ABHYANKAR)
JUDGE

Bahar